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May 2, 2003

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S. W. – Room TWB-204
Washington, D. C. 20554

Re: *Ex parte*, CC Docket No. 96-149, Verizon Petition for Forbearance from the
Prohibition of sharing Operating, Installation, and Maintenance Functions Under
Section 53.203(a)(2) of the Commission's Rules

Dear Ms. Dortch:

On Friday, May 02, 2003, Aryeh Friedman and the undersigned of AT&T met with William Dever, Rob Tanner, and Pamela Megna of the Wireline Competition Bureau's Competition Policy Division and Aaron Goldschmidt of the Bureau's Pricing Policy Division. AT&T was asked to present an overview of its comments in this proceeding and discuss generally the state of the record in this proceeding. The attached outline was distributed at the meeting to facilitate the overview of our comments.

During the course of our discussion AT&T emphasized that the Verizon forbearance petition rehashes the same arguments that the Commission has repeatedly rejected and that the basis for the OI&M rule – the BOC's market power in the local exchange market and its ability and incentive to leverage this market power to undermine competition in the long distance market – remains strong. In addition, Verizon's conclusory claims of its costs of compliance with the OI&M services restriction are unsupported and unaccompanied by any documentation that could allow them to be independently verified.

One electronic copy of this Notice is being submitted to the Secretary of the FCC in accordance with Section 1.1206 of the Commission's rules.

Sincerely,

cc: W. Dever
A. Goldschmidt
P. Megna
R. Tanner

Key Points:

A. The Commission, in the *Non-Accounting Safeguards Order* held that the OI&M restriction is mandated by section 272(b)(1)'s "operate independently" requirement and is critical in preventing discrimination and cost misallocation, that sharing of "OI&M" services "would inevitably afford access to the BOC's facilities that is superior to that grant to the affiliate's competitors," and "would create substantial opportunities for improper cost allocation." The risks of discrimination is substantial with core network operations like OI&M services.

B. There is no basis in the record to eliminate the OI&M restriction before the 272 affiliate requirement is allowed to sunset. There is no basis for changing the Commission's determination requiring the OI&M restraint, and granting the Forbearance Petition would be arbitrary and capricious.

1. Verizon is doing fine getting LD customers. Verizon's 272 affiliate has been enormously successful in the marketplace, gaining up to 34.2% market share and becoming one of the largest long distance carriers in the country. This is so even though that affiliate is tiny, with only 800 employees.

2. Their claims of cost, lost efficiencies and inability to introduce new and innovative services are unsupported by any evidence in the record. To the extent Verizon claims it has evidence but has not introduced it because it is business proprietary, AT&T has offered to take whatever steps are necessary to allow that information to be added to the record in a protected format; Verizon has nevertheless submitted nothing.

3. On the other hand, the evidence in this, and the Section 272 Sunset proceeding, is replete with evidence that the OI&M restriction is absolutely essential to prevent discrimination and cost misallocation.

- The BOCs retain market power in the local exchange market, even in states where they have long had section 271 authorization, and that there is a substantial threat that the BOCs can leverage their local market power to re-monopolize the long distance market.

- Documented cases that Verizon and SBC violated separation requirements and favored their own affiliate after receiving Section 271 approval.

4. There is no basis in the record for showing why non-structural safeguards would be more effective than the OI&M restriction. To the contrary, Commission experience generally and in this proceeding is that structural separation is essential.

(a) This is particularly true with respect to advanced services like broadband, which are harder to detect because there is little or no track record by which to gauge the BOC's performance, and that the OI&M restriction prevents discrimination and cost misallocation

(b) Examples of likely discrimination: Verizon would be uniquely positioned to meet customers' demands for "service reliability and meeting deadlines." Verizon argues that the OI&M restriction "puts Verizon at a significant disadvantage in competing with carriers that are able to offer an integrated service platform using their own local and long distance facilities." However, Verizon ignores the fact that because of Verizon's local market power, rival carriers must rely on the BOC for access to last mile access facilities and *cannot* offer integrated service platforms using their own local and long distance facilities.

(c) Permitting joint OI&M gives rise to myriad joint and common costs that could easily and undetectably be misallocated.